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(Local Civil Rule 5.1(e))

CORRECTED EXHIBIT D

**Order to Show Cause Issued by County Court of Tompkins County and
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CORRECTED EXHIBIT D

COUNTY COURT OF THE STATE OF NEW YORK
TOMPKINS COUNTY

IN THE MATTER OF THE APPLICATION
OF CORNELL UNIVERSITY TO UNSEAL
RECORDS FROM THE PROCEEDING
CAPTIONED:

PEOPLE OF THE STATE OF NEW YORK
vs.
KEVIN VANGINDEREN,

Defendant.

**ORDER TO
SHOW CAUSE**

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Upon the annexed affidavit of Nelson E. Roth, sworn to October 15, 2007 with attached exhibit, and upon all prior papers and proceedings heretofore had herein, and sufficient cause appearing therefor; it is hereby,

ORDERED, that Kevin Vanginderen or his attorney(s) show cause before this Court, at a Motion Term thereof, to be held at the County Court, County of Tompkins, located at 320 North Tioga Street, City of Ithaca, State of New York, on November 16, 2007 at ^{5 p.m.} ~~9:30 a.m.~~ or as soon thereafter as counsel can be heard, why an order should not be entered herein unsealing all records and papers relating to the arrest and prosecution of the above-captioned criminal matter; and it is hereby

FURTHER ORDERED, that service of a copy of this Order to Show Cause and the Affidavit of Nelson E. Roth in Support of Motion to Unseal Record with attached exhibit be made upon Kevin Vanginderen, Pro se, by Federal Express (no signature required) at the address listed on his Civil Action Case No. 37-2007-00076496-CU-DF-SC, at 637 3rd Avenue, Suite E-1, Chula Vista, CA 91910 on or before November 1, 2007 at 5:00 p.m.; and it is hereby

FURTHER ORDERED, that any and all answering affidavit and memorandum of law be served upon the attorney for movant Cornell University at the Office of University Counsel, 300 CCC Building, Garden Avenue, Ithaca, NY 14853 on or before November 13, 2007.

mp This matter to be submitted upon papers only. -
IT IS SO ORDERED.

Dated: October 17 2007

mp John Sherman
Judge
Hon. M. John Sherman

COUNTY COURT OF THE STATE OF NEW YORK
TOMPKINS COUNTY

IN THE MATTER OF THE APPLICATION
OF CORNELL UNIVERSITY TO UNSEAL
RECORDS FROM THE PROCEEDING
CAPTIONED:

AFFIDAVIT OF
NELSON E. ROTH
IN SUPPORT OF
APPLICATION TO
UNSEAL RECORD

PEOPLE OF THE STATE OF NEW YORK
vs.
KEVIN VANGINDEREN,

Defendant

STATE OF NEW YORK :
: ss.:
COUNTY OF TOMPKINS :

Nelson E. Roth, being duly sworn, deposes and says:

1. I am an attorney admitted to practice before the courts of the State of New York, and am one of the attorneys defending Cornell University in a civil matter just commenced in the Superior Court of California, County of San Diego by Kevin Vanginderen. I am fully familiar with the procedural facts and circumstances of this matter as set forth below.

2. Upon information and belief, Mr. Vanginderen had a criminal matter pending against him at some point in time in this Court and, upon information and belief, the file was sealed by this Court. I make this affidavit in support of Cornell's application pursuant to CPL §160.50(1)(d) to unseal all records and papers relating to the arrest and prosecution of the above-captioned matter, as necessary to Cornell's defense in the civil action brought by the defendant-now-plaintiff Vanginderen, which is currently pending in Superior Court of California, County of San Diego.

3. Vanginderen's complaint, a copy of which is attached hereto as Exhibit A, was served upon Cornell University on October 3, 2007, nearly twenty four years after his arrest for crimes alleged in the above-captioned matter prosecuted in this Court. A report of his arrest was

published in the Cornell Chronicle on March 17, 1983. The newly commenced civil action centers around that article published on March 17, 1983. Vanginderen contends that the article is defamatory, and desires to re-write history by removing the article from the digitized copy of the Cornell Chronicle available electronically from the Cornell University Library.

4. As stated in his complaint, Vanginderen communicated by email to Cornell prior to filing suit. However, when Cornell requested Vanginderen to consent pursuant to CPL §160.50(1)(d) to an unsealing order so that Cornell could evaluate the facts surrounding his threatened claim, he abruptly declined to consent and instead filed the lawsuit, Exhibit A.

5. The alleged conduct of Vanginderen reported in the Cornell Chronicle on March 17, 1983 is at the very heart of his pending civil complaint, as revealed in the allegations of the complaint itself, wherein Vanginderen claims that the report of his arrest is false and libelous. Case law is clear that a plaintiff waives the statutory privilege accorded by CPL § 160.50 when the plaintiff files a civil action placing in issue the contents of the sealed records, thus warranting the unsealing of those records upon a proper application by the party who must defend against the civil action. See Commercial Union Insurance Co. v. Jones, 216 A.D.2d 967, 968 (4th Dep't 1995); In re Scott D., 13 A.D.3d 622, 623 (2d Dep't 2004); cf. Green v. Montgomery, 95 N.Y.2d 693, 699 (2001) (applying same waiver analysis in the context of a juvenile record).

Wherefore, Cornell respectfully requests that the records of the criminal proceeding in the above-captioned matter be unsealed forthwith, including this Court's records, the records held by the District Attorney's Office and the records held by Cornell University Police.


NELSON E. ROTH

Sworn to before me this
15th day of October, 2007.


Notary Public

KRISTIN ANN BURGOS
Notary Public, State of New York
No. 01BU5037955
Qualified in Tompkins County
Commission Expires Jan. 17, 2011


STATE OF NEW YORK :
 : ss:
COUNTY OF TOMPKINS :

AFFIDAVIT OF SERVICE

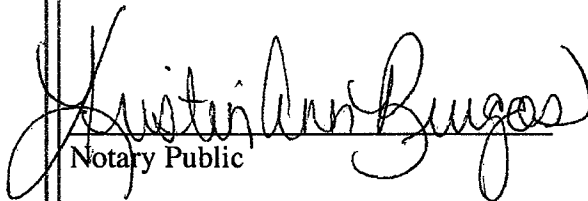
I, Kimberley J. Fassett, being duly sworn, say: I am not a party to the action, am over 18 years of age and reside at Burdett, New York.

On November 6, 2007, I served a copy of an Order to Show Cause, along with an Affidavit of Nelson E. Roth in Support of Application to Unseal Record, by delivering it to the custody of a representative of Federal Express in a pre-paid envelope addressed to the below identified individual at his last known address and scheduled for priority delivery:

To: Kevin Vanginderen
637 3rd Avenue, Suite E-1
Chula Vista, CA 91910


Kimberley J. Fassett

Sworn to before me this 6th
day of November, 2007.


Notary Public

KRISTIN ANN BURGOS
Notary Public, State of New York
No. 01BU5037955
Qualified in Tompkins County
Commission Expires Jan. 17, 2011 //